

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
REICHOLD CHEMICALS, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 82-1

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for emissions allegedly in violation of respondent's Section 9.03(b) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Nat W. Washington, Chairman, and Gayle Rothrock, member, convened at Lacey, Washington on February 25, 1982. Administrative Law Judge William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its Manager of Environmental Control, John A. Falkowski. Respondent appeared by its attorney Keith D. McGoffin.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 the testimony heard and exhibits examined, the Pollution Control
3 Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its Regulation I and amendments thereto, of which
8 notice is taken.

9 II

10 Appellant, Reichhold Chemicals, Inc., owns a pentachlorophenol
11 (wood preservative) plant on the tide flats area of Tacoma.

12 III

13 On December 1, 1981, respondent's inspector, while on routine
14 patrol, noticed a visible emission from the hydrochloric acid (HCl)
15 vent stack of appellant's plant. Placing himself within proper
16 distance from the emission and properly orienting his line of sight to
17 be perpendicular to the plume, he conducted an observation over a
18 period of 10 consecutive minutes. The opacity of the white plume was
19 80 to 100% for 8-1/2 of the 10 minutes observed.

20 Respondent's inspector promptly reported his observation to the
21 appellant's manager for environmental control. The inspector also
22 issued a notice of violation of Section 9.03(b) of respondent's
23 Regulation I relating to opacity of emissions. Appellant later
24 received a Notice and Order of Civil Penalty assessing a \$250 civil
25 penalty from which appellant now appeals.

III

On the day in question, appellant's manager for environmental affairs explained to the inspector that a warning light indicated failure of a water seal in the HCl process system. The absence of water, used to recapture HCl in an aqueous solution, would account for the emission of HCl in abnormal amounts on the day in question.

At hearing, appellant's manager for environmental affairs testified that the water seal had, in fact, not failed. Rather, that the flow of water was less than usual on the day in question. Also, an operation known as purging the sparger led to an increased air flow within the system. Consequently, on the day following, appellant's manager conducted an experiment which sought to duplicate the reduced water flow and increased air flow thought to have occurred on the day in question. No visible emission occurred. Appellant attributes this different result to the difference in humidity between the two days. The humidity on the day in question was 55-65% whereas the humidity on the day of the experiment is unknown. Appellant contends that but for the atmospheric water which the HCL attracted, there would have been no visible emissions. The HCL emission does chemically attract atmospheric water in contrast to the process by which other emissions cause condensation through temperature difference with the atmosphere.

IV

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board enters these

1 CONCLUSIONS OF LAW

2 I

3 Appellant cites 40 CFR Part 60 together with Appendix A, Method 9
4 as controlling in this case. We disagree. These are regulations
5 applicable only to "New Stationary Sources" (which this was not shown
6 to be), and are cited without regard to Washington State's
7 Implementation Plan adopted as 40 CFR Part 52, Subpart WW. This
8 Washington State Implementation Plan includes, by reference,
9 respondent's Regulation I, Section 9.03 as cited here, and is the law
10 applicable to this case.

11 II

12 Section 9.03(b) of respondent's Regulation I provides:

13 After July 1, 1975, it shall be unlawful for any
14 person to cause or allow the emission of any air
15 contaminant for a period or periods aggregating more
16 than three (3) minutes in any one hour which is:

17 (1) Darker in shade than that designated as
18 No. 1 (20% density) on the Ringelmann chart, as
19 published by the United States Bureau of Mines; or

20 (2) Of such opacity as to obscure an
21 observer's view to a degree equal to or greater than
22 does smoke described in Subsection 9.03(b)(1);
23 provided that, 9.03(b)(2) shall not apply to fuel
24 burning equipment utilizing wood residue when the
25 particulate emission from such equipment is not
26 greater than 0.05 grain per standard cubic foot.

27 III

Where, as here, Section 9.03(b) of respondent's regulation
applies, Method 9 of the Environmental Protection Agency does not have
the literal force of law.¹ However, Method 9 is a highly useful

1. See, in contrast, another portion of the Washington State
Implementation Plan, WAC 173-410-040 of the State Department of

1 reference to be used in determining whether a particular opacity
2 observation was conducted in such a way that the opacity readings are
3 accurate. Pacific Grinding Wheel v. PSAPCA, PCHB No. 80-226 (1981)
4 and International Paper Company v. SWAPCA, PCHB Nos. 77-55, et al.,
5 (1977). Thus we refer to the requirements of Method 9, Sections 1 and
6 2 relating to distance from the plume, angle of observation, position
7 of the sun, contrasting background and similar requirements. These
8 were properly complied with here. Likewise, we refer to the
9 requirements of Method 9, Section 2.5, Data Reduction, cited by
10 appellant. That section requires opacity to be observed over a period
11 of 24 consecutive observations (at 15 second intervals), and then
12 requires those opacity readings to be averaged.² This was adhered
13 to by respondent in this case. Although the plume looped during the
14 observation, these may be taken as instances of zero opacity and still
15 establish a relevant average opacity of approximately 85%. Finally,
16 Method 9 Sections 2.3.1 and 2.3.2 relating to steam plumes with
17 condensed water vapor are not applicable to this chemical (HCl)
18 emission. The appellant caused emissions which violate respondent's
19 Section 9.03(b) of Regulation I.

20
21 1. Cont.

22 Ecology (DOE) which applies exclusively to emissions from sulfite pulp
23 mills. That provision incorporates DOE Method 9 as a regulation.
24 Scott Paper Company v. PSAPCA, PCHB No. 81-9 (1981).

25 2. See also "Guidelines for Evaluation of Visible Emissions,"
26 EPA-340/1-75/007, April 1975, page 3.11 paragraph 3.5.6 cited by
27 appellant which would require 3 minutes of excess emissions before the
24 observations (6 minutes) to be averaged.

IV

Appellant's contention that there would have been no visible emission but for the atmospheric water which the HCl attracted raises the exception of Section 9.03(e) of respondent's Regulation I which states:

This section [9.03 relating to opacity] shall not apply when the presence of uncombined water vapor is the only reason for the failure of the emission to meet the requirements of this section.

In construing this provision, the Court of Appeals in Chemithon v. PSAPCA, 19 Wn.App. 689, 695, 577 P.2d 606 (1970) held:

The exception will not apply unless the violation can show that all contaminants but water had been removed.

It is clear from the testimony of appellant's environmental affairs manager that the emission did contain HCl, which is an air contaminant under the definition of Section 1.07(c) of Regulation I which defines "air contaminant" as dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance or any combination thereof. "Particulate matter" means any material, except water in an uncombined form, that is or has been airborne and exists as a liquid or solid at standard conditions. Appellant is not entitled to the exception of Section 9.03(b) of Regulation I.

V

The amount of the penalty is reasonable.

VI

Any Finding of Fact which should be deemed a Conclusion of Law is

1 hereby adopted as such.

2 From these Conclusions the Board enters this

3 ORDER

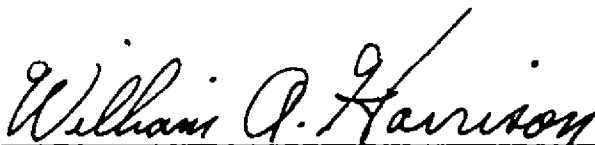
4 The \$250 civil penalty is affirmed.

5 Done at Lacey, Washington this 19th day of April, 1982.

6 POLLUTION CONTROL HEARINGS BOARD

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8 
9 NAT W. WASHINGTON, Chairman

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12 GAYLE ROTHROCK, Vice Chairman

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15 WILLIAM A. HARRISON
16 Administrative Law Judge

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Trish A. Ryan
TRISH A. RYAN, CLERK OF THE
POLLUTION CONTROL HEARINGS BOARD